



Planning Department

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MEMORANDUM

To: Board of Appeals **Date:** March 3, 2010

From: Roland Bartl, AICP, Planning Director *R.B.*

Subject: Powder Mill Properties, LLC (Bertolami), 48, 50 & 56 Powder Mill Road

1. Petition for Review of ZEO Decision (#10-02)
2. Petition for Variance from ZBL, Section 8.3.2 – Changing/Extending a Nonconforming Structure (#10-03)
3. Petition for Special Permit under ZBL, Section 4.1.8 - Flood Plain (#10-04)

Project Scope:

The applicant proposes to demolish or remove the small building on the site (56 Powder Mill Road), variably known as the Test House or the Doll House¹, and to rehab the larger industrial/commercial building on the site (50 Powder Mill Road), sometimes referred to as the Prescott Paint Building.²

On the Prescott Paint Building, the applicant proposes among other things –

- to fill in the basement/crawlspace,
- to repair the foundation,
- to replace the existing upper floor with a stronger, higher load bearing floor and the associated structural frame,³
- to extend the upper floor so as to square off the building's northeast end,
- to replace roof, windows, doors, and exterior siding, and
- to install six garage doors facing Powder Mill Road for a future automobile related use.

1. Petition for Review of ZEO Decision: The ZEO denied the building permit application for this work on January 22, 2010. The applicant filed the petition for review on January 26, 2010 within the statutory 30 day time frame. In summary, the salient points of the ZEO's denial are as follows:

- The building and site are pre-existing nonconforming in many respects; most relevant to the proposed work is the fact that most of the site is in the Flood Plain. Lot area within the flood plain cannot be counted towards calculating building net floor area. The existing buildings

¹ The demolition permit for the test house is currently on hold pending a decision by the Town or other entity to accept and move it to a different location.

² A SW wing of the Prescott Paint Building closest to Old High Street (48 Powder Mill Road) was demolished in 2004.

³ It appears that when finished, there will be an entirely new interior building frame supporting the upper floor and the existing roof, while the current building will simply remain as a cover around the new frame.

on the site exceed by multiple factors the maximum Floor Area Ratio (FAR) of 0.20 for the Powder Mill (PM) District set forth in the Zoning Bylaw (ZBL), Section 5 – Table of Standard Dimensional Regulations. There are presently +/-10,000 square feet of building floor area on the property. We estimate that a conforming building on the lot, if it could theoretically fit, could not exceed 300-500 square feet.

- The applicant proposes to remove the upper floor, which is adequate for residential use weight loading, and then replace it with a new and stronger floor to support commercial weight loading. However, removal of the upper floor brings the building into closer compliance with the ZBL's FAR limits, and once it is removed it cannot be replaced.
- Separately, the applicant proposes to extend the upper floor over the current lean-to type addition on the NE end of the building. This would increase the building's nonconforming FAR, which the ZBL does not allow by right. While the proposed filling of the basement reduces the FAR, once that floor space is removed the building has become less nonconforming to the ZBL's FAR limits. This floor space cannot then be added or moved to another part of the building such as the proposed upper floor extension.
- The proposed work must be considered "Substantial Improvement" of a building in the flood plain (ZBL, section 4.1.1.7) and therefore requires a special permit from the Board of Appeals under ZBL, section 4.1.8.
- The proposed removal of the Test House and the filling of the basement are not zoning problems by themselves. But, they do not mitigate or offset the proposed zoning violations.

Therefore, I recommend that the Board of Appeals uphold the ZEO's denial of the requested building permit. We have discussed and recommended to the applicant to pursue more appropriate avenues for approval of the proposed project, which led to the applicant's filing of a variance petition and a petition for a special permit to allow the proposed work to take place in the flood plain.

2. **Petition for Variance from ZBL, Section 8.3.2** to allow the alteration, reconstruction, extension and structural change of the nonconforming structure in a way that does not conform to all ZBL dimensional requirements, here specifically to the FAR limit of 0.20. Statutory standards for granting a variance are so stringent that they can hardly ever be met. However, this lot and building may just qualify:

The topography of the lot, on which the building is located, is 90% or more within the flood plain, thus severely restricting the allowable net floor area of a building under the ZBL FAR limit to a fraction of what would be allowed if there was no flood plain. The existing buildings on the lot exceed the FAR limit by a factor of 20 or more. The PM zoning district lies along the Assabet River. Much of the district is affected by the Assabet River flood plain. However, there are only two other properties out of 53 counted within the PM district that are similarly affected. The applicant has cited additional reasons why a variance is justified in this case. But, I think the truly unique features are: The particular impact of the flood plain on the lot and buildings, how the flood plain affects the allowable building floor area on the lot, and the degree of the pre-existing nonconformity of the buildings on the lot.

3. **Petition for Special Permit under ZBL, Section 4.1.8 - Flood Plain:** The Prescott Paint Building that would be subject to the proposed rehab work has an assessed value of +/- \$350,000. Acton's valuations are pretty close to market value. While not documented in the application, we are certain that the cost of the proposed rehab work exceeds 50% of the building's market value. Therefore, the proposed work constitutes a Substantial Improvement that is not solely necessary to assure safe occupancy conditions (ZBL, section 4.1.1.7).

Substantial Improvement within the flood plain appears to require a special permit under section 4.1.8.

In addition to Substantial Improvement, the applicant proposes to fill some of the flood plain, which also requires a special permit under section 4.1.8.

- Note that the Engineering Department points out that the applicant offered a substantially lower number (59,000 cubic feet) for the lot's flood storage volume in a 2001 petition to the Board of Appeals than what is represented in the current application before the Board (82,945 cubic feet). The applicant should explain or reconcile the difference.
- ZBL, section 4.1.8.1.b) provides that upon granting a special permit the Board of Appeals must find that "at least 98 percent of the Natural Flood Storage Volume of the Flood Plain on the site is preserved without the use of compensatory storage techniques and disturbance of the natural characteristics of the Flood Plain on the site is kept to a minimum". I find implied in this section that there must be provisions for compensatory flood storage for the other 2%. Previous special permit projects in the flood plain have provided compensatory flood storage. Here, no compensatory flood storage is proposed.

Overall:

- The proposed building rehabilitation appears reasonable and worthwhile. It deserves fair consideration. If completed as proposed, the building will retain its character reminiscent of a mill building from an earlier industrial period. The proposed upper floor addition on the north east end balances the building well. The proposed fenestration and garage doors maintain a simple rhythm and fitting proportions to the overall building. While one might be disappointed that the applicant is preparing for yet another car related use, the proposed rehabilitation work will help preserve a historic signature building in this commercial/industrial area. The proposed rehabilitation project in concept has the support of the Planning Department.
- We sent the applicant to the Design Review Board because this is a rather visible project. I have been told that the Design Review Board may be recommending barn style garage doors instead of the proposed glass paneled overhead doors. I would strongly disagree. Barn style doors would be disrespectful of the building and the area in which the building is located and inject an unfitting rural element. In addition, the glass paneled doors would provide natural daylight into the garage bays' interior.
- For a number of years I have persistently discussed with the applicant landscaping and pedestrian site improvements, and the applicant has persistently resisted. Understandably, the applicant is focused on maximizing the site's utility for automobile sales and service use, including the loading and unloading of vehicles from a car carrier⁴. However, the wide open pavement that merges with the street without definition is frankly an eyesore and certainly unfitting to the rather tastefully proposed building rehabilitation. The site plan submitted with the variance petition shows some token landscape islets and a painted "sidewalk" across the entire length of the property. I find this inadequate.
- The site plan special permit for the abutting 60 Powder Mill Road site to the NE, requires that: "The Applicant shall no later than August 15, 2008 submit to the Planning Director for Town legal review and approval a covenant to the Town of Acton in recordable form that binds the Applicant and the successors, and assigns, including all successors in ownership of both 56 Powder Mill Road and 60 Powder Mill Road to the commitment of installing an emergency

⁴ It appears Powder Mill Road is wide enough with sufficient shoulders to accommodate the car carrier loading and unloading on the street. Many car dealerships unload on the street without much trouble. Also, it appears that there is sufficient room to the NE side of the main building for loading/unloading operations.

ramp/driveway connection adequate for SU-30 fire apparatus use between 60 and 56 Powder Mill Road at such time as 56 Powder Mill Road is before the Town for any kind of special permit or Site Plan Special Permit. The Applicant shall cause the approved covenant to be recorded at the Registry of Deeds no later than by November 1, 2008.” All these deadlines have slipped and no covenant has been recorded. Right now, the Town is waiting to see what happens with the Test House before seeking compliance with this site plan special permit⁵. Nevertheless, the condition exists. The applicant is now asking for a special permit for the lot that includes 56 Powder Mill Road. It is therefore time to install the ramp. The site plan submitted with the variance petition does not show it.

- It is obvious that the intended use of the site is a car dealership of some kind that includes repair services. The ZBL has requirements for vehicle parking for retail and/or office uses based on the net floor area attributable to these uses; plus two spaces, plus three spaces for each garage service bay. The site plan does not show with sufficient clarity how and where these spaces would be provided in conformance with zoning requirements.
- Much of the lot is paved over in a manner that inconsistent with the requirements of the ZBL. The pavement is pre-existing nonconforming. In 2007 the Board Appeals ruled that, unlike customer or employee parking the vehicle display and storage within 30 feet of the front lot line at the 48 and 50 Powder Mill Road address portions of the lot was not a grandfathered use. On the 56 Powder Mill Road address portion of the lot, the applicant holds a dealer license, and there had been cars stored or displayed on it from time to time. It is unclear to me whether or not such car storage occurred within the 30’ front setback at any recent time or ever, or whether such use, if it occurred was grandfathered or illegal. It appears that the proposed site plan does not show vehicle display/storage within 30 feet of the front lot line except in the very easterly corner behind a proposed +/-10-foot wide landscaped area, where the address is 56 Powder Mill Road. All other parking spaces shown within 30 feet from the front lot line, while not clearly labeled as such, appear to be proposed customer or employee parking spaces.
- The requested special permit and variance, if granted, provide an opportunity that may not come around again in a long time to effect meaningful site improvements on the lot that would reasonably accommodate the intended use. Specifically, I recommend the following:
 1. **Sidewalk & Landscaping:** The attached color sketch shows in concept where raised sidewalk sections and landscaping could be added while maintaining legal maneuvering aisle widths behind the proposed parking spaces and maintaining reasonable function on the lot for the proposed use (raised sidewalk in grey, landscaped areas in green, possible shade tree locations in dark green). I would encourage the applicant to redraw the site plan fine tuning these suggestions. A registered landscape architect should be employed to prepare a landscape plan with low maintenance planting material and hardy shade trees. The landscape architect should consult with the Tree Warden on species selection.
 2. **Fire Apparatus Ramp to 60 Powder Mill Road:** As noted above, the site plan special permit for 60 Powder Mill Road requires the installation of the ramp in connection with any special permit for 56 Powder Mill Road. This ramp should be show on the site plan.
 3. **Parking spaces:** The site plan should show a clear accounting for parking spaces based on retail and office floor area in the building and the repair shop garage bays.

⁵ The test house was under consideration this year by the Community Preservation Committee (CPC) for funding the relocation to a nearby Town-owned property. However, the CPC will not recommend funding for this project. As a result the Test House will likely be demolished.

- I recommend that the hearing on the petition for review of the ZEO's decision be closed and the petition be denied.
- I recommend further, that the hearing for the special permit and variance petition be continued, and the decision deadline be extended by a sufficient amount of time to allow the applicant to revise his proposal and plan in a manner that is responsive to the staff comments as the Board may deem appropriate.
- Should the Board ultimately decide to grant the requested variance and special permit, compliance with any required plan modifications and conditions should be tied to the issuance of a Certificate of Occupancy for the rehabilitated building and the issuance of any new, modified, or expanded car dealer license for the lot.

Attachments:

- Color sketch for suggested sidewalk and landscaping (2 sheets)
- Aerial photographs (4)

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48-56 Powder Mill Road

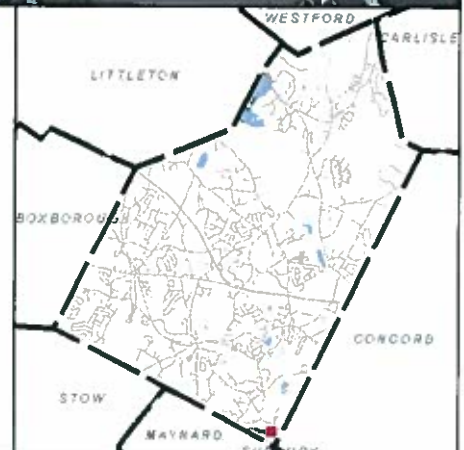
**Property Information**

Property ID J3-49
Location 50 POWDER MILL RD



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50 Powdermill Rd, Acton, MA 01720-5930

Aerial view of 50 Powdermill Rd, Acton, MA 01720-5930. The image shows a large parking lot filled with cars, a building with a blue roof, and surrounding trees and roads.

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